

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



**ORIGINAL** **76-1335**

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**United States Court of Appeals  
For the Second Circuit**

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UNITED STATES OF AMERICA,

*Appellee,*

-against-

HENRY BUCCI,

*Defendant-Appellant.*

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*On Appeal From The United States District Court  
For The Southern District of New York*

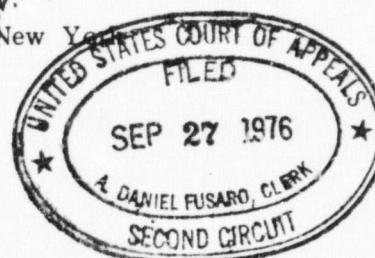
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**Appellant's Appendix**

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PERTINE

CKET ENTRIES

4/14/76, Filed indictment. Case assigned to Judge Carter superseding 76 Cr 141.

4/26/76, Suppression hearing begun and concluded on motion to suppress Decision reserved until tomorrow. Trial to begin April 27, 1976 at 10 A.M., CARTER J.

4/27/76, Motion Denied ... Carter, J.

Defendant pleads NOT GUILTY. Bail fixed on Indictment 76 CR 141 is to be continued on this Indictment... CARTER, J.

TRIAL began and continued.

4/28/76, TRIAL continued.

5/3/76, Fld sealed or elope to be sealed or unsealed only at the direction of Judge Carter or another Fed. Judge ... For use of Appellate Ct. if desired ... Carter, J. (Placed in lotsitier vault).

4/29/76, TRIAL continued

4/30/76, TRIAL continued

5/3/76, TRIAL continued

5/4/76, TRIAL continued

5/5/76, TRIAL continued. Government rests defendant moves to dismiss the indictment. The motion of the defendant to dismiss CT 1 of this indictment is Granted for the reasons indicated on the record. The case will go to the jury on Ct. 2.

5/6/76, TRIAL continued.

5/7/76, TRIAL continued and concluded. JURY VERDICT DEFT. GUILTY. Pre-sentence reports ordered sentenced adj. to June 15, 1976 at 9:30 A.M. in court room 318. Bail continued at \$10,000 P.R.B.....Carter, J.

5/14/76, Filed order that the aforesaid 47 reels of tape and toll records be sealed and transferred into the custody of the Westchester County District Attorney's Office...Carter J. M/N

5/26/76, Filed order that notices filed on 4/16 and 4/20, 1976 declaring the defendant Peter Variano eligible for treatment as a dangerous special offender be unsealed on May 24, 1976 ...Brieant, J. M/N.

4/23/76, Filed government's memorandum of law (docketed 6/2/76).

7/8/76, Defendant (atty present) filed JUDGMENT & COMMITMENT the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THIRTY (30) DAYS on ct. 2. The deft. is placed on probation for a period of ONE (1) YEAR, subject to the standing probation order of this Court. Bail Pending Appeal is fixed at \$10,000 Personal Recognizance Bond...Caster, J. issued copies.

7/9/76, Filed notice of appeal from judgment filed 7/8/76 (mailed copy of appeal to defendant).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA,

-v-

INDICTMENT

S 76 Cr.

LAWRENCE CENTORE, a/k/a "Larry Black,"  
MICHAEL YANNICELLI, PETER VARIANO,  
MICHAEL EVANGELISTA, WILLIAM MURTY,  
JAMES OSTRANDER, JOHN MONACO,  
MICHAEL PICCIANO, MICHAEL DeMICHALES,  
FRANK GALELLA, ANTHONY RUSSILLO,  
ALFONSO COLETTI, and HENRY BUCCI,

Defendants.

- - - - - X

COUNT ONE

The Grand Jury charges:

1. From on or about September 1, 1968, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, LAWRENCE CENTORE, a/k/a "Larry Black", MICHAEL YANNICELLI, PETER VARIANO, MICHAEL EVANGELISTA, WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO, MICHAEL PICCIANO, MICHAEL DeMICHALES, FRANK GALELLA, ANTHONY RUSSILLO, ALFONSON COLETTI and HENRY BUCCI, the defendants, and Francis J. Millow, Angelina David and Morgan Davis, named herein as co-conspirators but not as defendants, unlawfully, wilfully, and knowingly, did combine, conspire, confederate and agree, together and with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit,

to violate Title 18, United States Code, Section 1955.

2. It was part of said conspiracy that said defendants would unlawfully, wilfully and knowingly, conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse policy business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) being and remaining in substantially continuous operation for a period in excess of thirty days and have a gross revenue of two thousand dollars in a single day.

3. Among the means whereby the defendants carried out the conspiracy were the following:

a. The defendant MICHAEL YANNICELLI, together with the defendants LAWRENCE CENTORE, a/k/a "Larry Black", and PETER VARIANO, controlled, directed, managed, and supervised the illegal gambling business, which operated at various locations around North Tarrytown, Yonkers, Hastings-on-Hudson, Tuckahoe, Eastchester, lower New Rochelle, and upper Bronx County.

b. The defendant MICHAEL EVANGELISTA, operated, conducted and managed a wireroom in the premises of 929 East 213th Street, Bronx, New York.

c. The defendant ALFONSON COLETTI, operated, conducted and managed a wireroom in the premises of Al's Stationery Store,

95 Beekman Avenue, North Tarrytown, New York.

d. Francis J. Millow, named herein as a co-conspirator but not as a defendant, operated, conducted, and managed a wireroom in the premises of 25 Cedar Street, North Tarrytown, New York.

e. The wirerooms, including those specified herein, cooperated with and assisted each other in the operation of the illegal gambling business by:

(i) Accepting sports and mutual race horse policy wagers from individual bettors not named herein who would telephone the various wirerooms to place their bets;

(ii) Exchanging information concerning current odds (commonly known as the "line") on sporting events;

(iii) Relaying and advising each other of recent betting results including the daily winning policy number.

(iv) Placing and receiving large wagers with each other so that no single wireroom would be exposed to a large loss (commonly known as "laying off");

(v) Reviewing amounts of money owed to or by bettors or other participants in the illegal gambling business (commonly known as the "play and collects") as a result of their betting activity.

f. In addition to telephoning various wirerooms to place their bets, individual bettors in Bronx and Westchester Counties also placed wagers with runners. The defendants FRANK GALELLA, HENRY BUCCI, MICHAEL DeMICHAELS, ANTHONY RUSSILLO,

and Francis J. Millow, named as a co-conspirator but not as a defendant, together and with others not named herein, collected wagers from individual bettors six days a week at various locations in Bronx and Westchester Counties, including Galella's Barber Shop, 25 Main Street, Tarrytown, New York, Green Tavern Restaurant, 14 Main Street, Hastings-on-Hudson, New York, and the Headless Horseman Sports Center, 66 Beekman Avenue, North Tarrytown, New York. The defendants FRANK GALELLA, HENRY BUCCI, MICHAEL DeMICHAELS, and ANTHONY RUSSILLO, together with Francis J. Millow, named herein as a co-conspirator but not as a defendant, and with others not named herein, would, on a weekly basis, collect the losses from and pay the winnings to individual bettors.

g. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, WILLIAM MURTY, and others not named herein, would collect the betting slips accumulated by the runners in the gambling business at various locations in the Bronx and Westchester Counties. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, and WILLIAM MURTY would need at various locations in Bronx County, including the vicinity of the intersection of Bronx Boulevard at 27<sup>th</sup> Street, Bronx, New York, to facilitate the transfer of the accumulated betting slips to a central location, commonly known as a "bank", where the betting slips for each runner would be examined to determine (1) the total amount of wagers placed with the runner, (2) his commission based upon 30% of the total

amount of wagers which he collected, (3) the number of winning wagers received as well as the gross amount wagered in the entire operation, and (4) the net profit or loss to the defendants MICHAEL YANNICELLI and PETER VARIANO after the winning wagers, commissions and rents for the various wirerooms were paid.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed, among others, the following overt acts in the Southern District of New York.

1. In or around December, 1968, the defendant LAWRENCE CENTORE spoke to a co-conspirator whose identity is known to the grand jury in the vicinity of Bruno's Restaurant Yonkers, New York.

2. In or around March, 1969, the defendant LAWRENCE CENTORE spoke to the defendant MICHAEL YANNICELLI.

3. In or around August, 1971, the defendant LAWRENCE CENTORE met a co-conspirator whose identity is known to the grand jury at approximately 9:00 a.m., in Yonkers, New York.

4. In or around March, 1971, the defendant PETER VARIANO met with co-conspirator Francis J. Millow at the Green Tavern, 14 Main Street, Hastings-on-Hudson, New York.

5. In or around May, 1974, the defendants MICHAEL YANNICELLI and PETER VARIANO met with co-conspirator Francis J. Millow in Hastings-on-Hudson, New York.

6. In or around August of 1973, the defendants HENRY BUCCI and PETER VARIANO met with co-conspirator Francis J. Millow at the Sleepy Hollow High School, North Tarrytown, New York.

7. On or about October 20, 1974, the defendant HENRY BUCCI met with co-conspirator Francis J. Millow at approximately 1:00 p.m.

8. On or about December 12, 1974, the defendant MICHAEL EVANGELISTA gave the defendant MICHAEL PICCIANO an envelope in the immediate vicinity of 239th Street and Bronx Boulevard, Bronx, New York.

9. On or about December 16, 1974, the defendant MICHAEL EVANGELISTA gave the defendant WILLIAM MURTY an envelope in the immediate vicinity of 949 East 214 Street, Bronx, New York.

10. On or about December 18, 1974, the defendants WILLIAM MURTY, MICHAEL PICCIANO and JAMES OSTRANDER met in the immediate vicinity of Bronx Boulevard and 239th Street, Bronx, New York.

11. In or around December, 1974, the defendant JOHN MONACO introduced the defendant WILLIAM MURTY to Christine Romeo.

12. On or about December 21, 1974, the defendant JOHN MONACO handed the defendant JAMES OSTRANDER at least five envelopes in Bronx County, New York.

13. On or about December 31, 1974, the defendant

MICHAEL EVANGELISTA entered the premises of 929 East 213th Street, Bronx, New York.

14. In or around May, 1972, the defendant MICHAEL DeMICHAELS met in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.

15. In or around July, 1972, the defendant MICHAEL DeMICHAELS had a conversation in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.

16. On or about November 13, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.

17. On or about December 7, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.

18. On or about November 22, 1974, the defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.

19. On or about December 4, 1974, the defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.

20. On or about November 14, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow.

21. On or about November 28, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow.

(Title 18, United States Code, Section 371).

COUNT TWO

The Grand Jury further charges:

From on or about April 15, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, LAWRENCE CENTORE, a/k/a "Larry Black," MICHAEL YANNICELLI, PETER VARIANO, MICHAEL EVANGELISTA, WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO, MICHAEL PICCIANO, MICHAEL DeMICHAELS, FRANK GALELLA, ANTHONY RUSSILLO, ALFONSO COLETTI and HENRY BUCCI, the defendants, unlawfully, wilfully, and knowingly, did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse policy business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct and won a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of thirty days, and having a gross revenue of two thousand dollars in a single day.

(Title 18, United States Code, Sections 1955 and 2).

s/Thomasina Amarino  
Foreman

s/Robert B. Fiske, Jr.  
ROBERT B. FISKE, JR.  
United States Attorney

\*\*

MR. ABZUG: Your Honor, the government is going  
1 Francis Millow to the stand.

N C I S M I L L O W, called as a witness by  
the government, having been first duly sworn,  
was examined and testified as follows:

## EXAMINATION

ABZUG:

Q Mr. Millow, how old are you, sir?

A Twenty-eight.

Q Are you married?

A No.

Q What is your current address, sir?

A 25 Cedar Street, North Tarrytown.

Q How long have you resided at that address?

A All my life.

Q With who, sir?

A My father.

Q Do you know a man by the name of Hank Bucci?

A I refuse to answer under the grounds that I may  
inmate myself.

MR. MITCHELL: Your Honor, at this time I move  
mistrial.

THE COURT: Motion denied.

MR. ABZUG: Mark this as Government's Exhibit 17.

1 bsas2

Millow - direct

566

2 (Government's Exhibit 17 marked for  
3 identification.)

4 BY MR. ABZUG:

5 Q Mr. Millow, showing you what has been marked  
6 for identification only as Government's Exhibit 17, have  
7 you seen this document before?

8 MR. PANZER: Judge, I hate to interrupt, but  
9 I don't know what the document is. I haven't seen it before.  
10 Can we have a side bar?

11 THE COUT: Not now.

12 Q Have you seen that, sir?

13 A I don't remember seeing this.

14 MR. PANZER: I didn't hear that.

15 THE WITNESS: I don't remember, sir.

16 MR. ABZUG: Your Honor, at this time I ask --

17 MR. KATCHER: Your Honor, at this time on  
18 behalf of my client, Mr. Bucci, in view of the response of  
19 this witness, I respectfully move for the withdrawal of  
20 a juror and the declaration of a mistrial.

21 THE COURT: Mr. Katcher, the motion is denied.  
22 There is no point in making a motion like that.

23 MR. ABZUG: Your Honor, at this time I ask the  
24 Court to direct the witness to answer.

25 THE COURT: On what basis?

1 bsas3

Millo - direct

2 MR. ABZUG: On the basis of what this  
3 discloses (handing).

4 THE COURT: Let the jury be excused.

5 (Jury excused)

6 THE COURT: Mr. Millow, are you aware of the  
7 fact that as of October 6, 1975, you refused to give  
8 testimony and the government is granting you immunity from  
9 any testimony that you do give that might be used against  
10 you except in the prosecution for perjury; are you aware of  
11 that?

12 THE WITNESS: I have immunity in the federal  
13 court except for perjuring myself.

14 THE COURT: At the present time then, the point  
15 is that you have refused to testify on the grounds that  
16 the testimony may incriminate you.

17 THE WITNESS: Yes.

18 THE COURT: But you are required now to testify  
19 because of the fact that the testimony cannot be used to  
20 incriminate you, unless -- except on the question of  
21 perjury. If you perjure yourself then you may be  
22 prosecuted.

23 I am therefore going to order you to testify.

24 THE WITNESS: I have immunity in federal court,  
25 is that right?

1 bsas4

Millo - direct

2 THE COURT: Yes.

3 THE WITNESS: I need immunity in the state, your  
4 Honor, because I have committed other crimes within the  
5 state, and therefore, my testimony could be used against  
6 me in other courts, in the state of New York.

7 THE COURT: I don't believe that is so. The  
8 immunity that is given you here means it cannot be used  
9 against you for any purpose other than the fact of perjury,  
10 and therefore I have to direct you to testify. I have to  
11 direct you that you have waived your right of self-  
12 incrimination. I am going to be required to ask you to  
13 testify.

14 THE WITNESS: Like I said, your Honor, I believe  
15 that I should have immunity against state prosecutions.

16 THE COURT: Mr. Millow, I'm not going to  
17 argue with you about it.

18 My understanding is that the immunity that has  
19 been granted to you means that this testimony can't be  
20 used against you in any court, except on the question of  
21 perjury.

22 I'm not going to hear from you either. You sit  
23 down.

24 (Addressing Mr. Siedler:)

25 I am therefore going to have to ask you to

1 bsas5 Millow - direct

2 testify. If you refuse to testify then of course I'm  
3 going to have to hold you in contempt.

4 I will give you a few minutes to make up your  
5 mind, and we will call the jury back and Mr. Absug will  
6 repeat the questions and you are to give answers to them.

7 MR. ABZUG: Your Honor, I just want to make  
8 the following representation to the Court: Up until  
9 approximately five minutes ago I was under the impression  
10 that Mr. Millow would testify before this Court, and this  
11 is totally unexpected to the government.

12 THE COURT: Bring the jury back.

13 MR. ABZUG: May Mr. Aronwald sit at the table  
14 with me for the purposes of the examination of this witness?

15 THE COURT: What is your name, sir?

16 MR. ARONWALD: William Aronwald, sir.

17 (Jury present)

18 DIRECT EXAMINATION (Continuing)

19 BY MR. ABSUG:

20 THE COURT: Proceed.

21 Q I ask you again, Mr. Millow, do you know an  
22 individual by the name of Hank Bucci?

23 THE WITNESS: Your Honor, I believe that I have  
24 to have a counsel here. I have to have my attorney here.  
25 I can't answer. I am afraid I might perjure myself once

1 bsas6

Millow - direct

2 again.

3 THE COURT: Might perjure yourself?

4 THE WITNESS: Yes. Under what I just said  
5 before, under the state law here.

6 THE COURT: I gave you your instructions about  
7 that, my interpretation of what that is. You will either  
8 have to proceed with that or not at all.

9 THE WITNESS: I cannot proceed yet. I'll have  
10 to have advice of counsel.

11 THE COURT: All right. You are at this point  
12 in contempt, and we will proceed without you.

13 Do you want him excused?

14 MR. ABZUG: I'd like the marshal called, your  
15 Honor.

16 THE COURT: All right.

17 MR. ABZUG: Your Honor, in light of what has  
18 occurred, might I have a short recess?

19 THE COURT: Yes.

20 MR. ABZUG: Thank you.

21 THE COURT: The jury will be excused. How  
22 much time do you want, about ten minutes?

23 MR. ABZUG: Yes, about ten to fifteen minutes,  
24 your Honor.

25 THE COURT: I'll give you ten. The jury may be

1 bsas7

Millo - direct

571

2 excused.

3 (Jury excused)

4 THE COURT: Who is your lawyer?

5 THE WITNESS: Martin Varrichio.

6 THE COURT: You should have had him here.

7 MR. PANZER: I just can't hear, your Honor.

8 THE COURT: I'll try and do my best.

9 MR. ABZUG: Mr. Varrichio was made aware that  
10 his client was testifying here today. Mr. Millow also knew  
11 he was going to be testifying here today. However, I think  
12 it might be appropriate, in light of the witness' disobedience  
13 to your order, to insure that he fully understands the  
14 order, that perhaps we get a Legal Aid lawyer up here to --  
15 so that he can consult with him.

16 THE COURT: Where is Mr. Varrichio?

17 MR. ABZUG: I don't know that, your Honor.

18 I asked him -- your Honor, prior to Mr. Millow's  
19 appearance, I asked Mr. Varrichio if he wanted to be down  
20 here. Mr. Varrichio said no. I asked Mr. Millow if he  
21 wanted Mr. Varrichio down here. He said no.

22 THE COURT: Continue, please.

23 In the first place, what you need is a marshal,  
24 because from now on Mr. Millow is in custody.

25 Call a Legal Aid lawyer and have him consult

4 with him, and also during this recess put in a call to  
5 Mr. Varrichio.

6 MR. ABZUG: One last thing, your Honor, this --  
7 as I said, this is totally unanticipated. I spoke to  
8 Mr. Millow before he came on today and he said he was going  
9 to testify. Mr. Aronwald informs me that he spoke with  
10 Mr. Millow for about fifteen minutes and Mr. Millow  
11 indicated he was going to testify truthfully.

12 I fully understand the Court's instructions  
13 that this trial is to be expedited, and I have done my best  
14 to comply with those orders. However, this witness was  
15 perhaps -- perhaps his Honor is aware from my opening, he  
16 is one of the principal government witnesses and it was  
17 anticipated his testimony would take at least the entire day.  
18 We were going to introduce the results of the search of  
19 his house through this witness, we were going to introduce  
20 the results of the wiretap through this witness.

21 Your Honor, I am distressed to report that I am  
22 afraid that the government is at this juncture only ready  
23 to proceed with one witness, that is Mr. Spota, who is  
24 going to introduce this evidence. The remaining witnesses  
25 are just not physically here.

26 THE COURT: I suppose it may well be that  
27 Mr. Millow may have a change of mind if he gets some legal

1 bsas9 Millow - direct

2 advice. I don't know.

3 MR. ABZUG: I merely wanted to advise the Court  
4 of the government's readiness for trial, or lack thereof,  
5 at this point.

6 THE COURT: All right. At any event, I think you  
7 better consult with an attorney, Mr. Millow. I've told  
8 you what the scope of your immunity is, and that that scope  
9 covers any court in the United States. You better consult  
10 with your attorney about this in terms of your refusal to  
11 testify. Get him a Legal Aid counsel.

12 Is there anything further? You can make the  
13 calls to Legal Aid and try to get a lawyer for him. Any-  
14 thing further to be done other than to recess for a few  
15 minutes?

16 MR. ABZUG: No, your Honor.

17 (Recess)

18

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21

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23

24

25

2 THE COURT: Where do we stand now,  
3 Mr. Abzug?

4 MR. ABZUG: Your Honor, we're informed  
5 that no legal aid lawyer is presently available.  
6 We're also informed that Mr. Millow does not want to  
7 consult with a legal aid lawyer, he wants to consult with  
8 Mr. Mark Varrichio, his attorney-- his personal  
9 attorney. If you like, you can recall Mr. Millow  
10 and question him on this.

11 We're informed that Mr. Varrichio is  
12 presently engaged and unavailable today. The government  
13 has an application to make, your Honor, in light of --  
14 should Mr. Millow continue to disobey this court's  
15 order, our case -- we have to assume, your Honor, that  
16 our case is going to have to proceed without Mr. Millow's  
17 testimony. Obviously that is going to necessitate a  
18 major restructuring of our case and accordingly we would  
19 respectfully ask the court for a day's adjournment.

20 I need that adjournment to get in touch  
21 with witnesses and, quite frankly, rethink the theory of  
22 the government's case.

23 THE COURT: Where is Mr. Mitchell?  
24

25 MR. PANZER: I don't know, your Honor.  
I assume he stepped out briefly.

2 THE COURT: I had excused Mr. Mitchell  
3 for a few moments.

4 What do you want to do now?

5 MR. ABZUG: As I indicated, your Honor,  
6 what I would like to do is two things; first of all,  
7 I think it would be, if I may respectfully make  
8 the suggestion, I think it would be appropriate to get  
9 a statement on the record from Mr. Millow as to exactly  
10 what he understands his arrangements vis-a-vis his  
11 attorneys are so the government at least and the Court  
12 can have some kind of an indication what his future  
13 intentions are.

14 Secondly, if Mr. Millow continues,  
15 after consulting with counsel, to be in contempt of this  
16 Court's order, then I would ask that we do have the day's  
17 adjournment.

18 \* THE COURT: Where is Mr. Millow now?  
19 Bring him in.

20 As far as I can understand, his position at  
21 the present time is that he's in contempt of court and  
22 he is going to be -- at the moment he's going to be  
23 sentenced to imprisonment until he does talk or until  
24 this trial is over.

25 At that point you may proceed some other way,

2 but I will do that.

3                   By the way, some unfinished business is  
4 the motion made at the side bar, that is, that you be  
5 allowed to have an agent come in and testify as to the  
6 fact that Mr. Calise had sometime in August of 1974 told  
7 them about the code.

8                   The motion is denied.

9                   Mr. Panzer I think is correct.

10                  As I understand it, he was a fugitive at  
11 that time and began to cooperate with the government.  
12 The only basis upon which you can rehabilitate a witness  
13 is -- under those circumstances, is if the statements  
14 that he made were so far removed from any point where  
15 he had a motive to lie, and I think that under the  
16 circumstances that are now present that he certainly had  
17 that motive.

18                  Ostensibly he had the motive and so the  
19 motion is denied.

20                  I would suppose that no matter what occurs,  
21 it appears to me that after Mr. Spota's testimony, unless  
22 Mr. Millow has a drastic change of heart, that we're not  
23 going to be able to proceed until tomorrow, in any event.

24                  There is no way you can take care of that  
25 matter that you had on for tomorrow now, is there?

2 MR. PANZER : The defendant lives in New Jersey  
3 and it's a sentence at 1:00. I wish I had anticipated it,  
4 I certainly would have put it on for today. I don't  
5 mean to be facetious, your Honor.

6 THE COURT: I know you are not. Certainly  
7 none of us, particularly Mr. Abzug, could have anticipated  
8 what has happened.

9 MR. PANZER: Maybe your Honor would want  
10 to go into the identification issue that was raised.

11 THE COURT: We could finish that this  
12 afternoon.

13 MR. HARTMAN: I believe Mr. Millow is  
14 going to have to testify in connection with that.

15 F R A N C I S M I L L O W, resumed.

16 THE COURT: Mr. Millow, you know that you  
17 are, by virtue of refusing to testify after my instructions,  
18 that you are in contempt, and I am going to confine you  
19 to imprisonment until you do testify.

20 Have you been in touch with your lawyer?

21 THE WITNESS: Yes. I called my attorney  
22 before, he's in trial.

23 THE COURT: When are you going to consult  
24 with him?

25 THE COURT: As soon as possible. His assistant was

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2 there and his assistant told me he will get in contact  
3 with him as soon as he can.

4 THE COURT: You are not prepared to testify  
5 until you consult your own attorney, is that correct?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right.

8 Mr. Marshal, you can take him and book him  
9 and put him in confinement.

10 (Witness excused.)

11 THE COURT: Can we now proceed with  
12 Mr. Spota?

13 I don't understand, Mr. Hartman, why he  
14 has to be here.

15 MR. HARTMAN: In connection with the  
16 identification.

17 THE COURT: Is he the one that identified  
18 them?

19 MR. HARTMEN: Yes, sir. We could probably  
20 do a portion of it because Investigator Emory was  
21 there --

22 THE COURT: Let's see if Mr. Millow is willing  
23 to testify as to that.

24 He identified these people, and he was  
25 shown these pictures.

MR. HARTMAN: That's what the prosecution  
s, sir.

MR. ABZUG: Again, I'm having a problem  
g exactly why Mr. Millow's testimony is  
connection with whether the photographic  
nduly suggestive, your Honor.

THE COURT: Who were they shown to?

MR. ABZUG: To Mr. Millow. The point is,  
read is either suggestive or it's not.

THE COURT: I don't know what -- other than  
him calling him and him corroborating that.

S M I L L O W , resumed.

THE COURT: Mr. Millow, you were shown some  
I understand, and I'm going to have a  
hat was done in regard to that.

If you are called, are you prepared to  
o the circumstances under which you were  
photographs?

THE WITNESS: I have to consult with my  
Honor. At this point I don't know what  
eed counsel.

THE COURT: All right. Take him out.

(Witness excused.)

THE COURT: In any event, we can have that --

1 bssr

2 THE CLERK: As the Court that is about to charge  
3 the jury, those spectators desiring to leave the room may  
4 do so now.

5           C H A R G E        O F        T H E        C O U R T

6           Ladies and gentlemen, we now come to that part  
7 of the case where the evidence is in, the lawyers have  
8 presented their arguments, and you are about to exercise  
9 your final role, which is to pass upon and decide the fact  
10 issues in the case.

11           You are the sole and exclusive judge of the facts.  
12 You pass upon the weight of the evidence, you determine the  
13 credibility of witnesses, and you resolve such conflicts as  
14 there may be in the evidence, and you draw such reasonable  
15 inferences as may be warranted by the testimony ... exhibits  
16 in the case.

17           My function at this point is to instruct you as  
18 to the law that is applicable to the case. It is your duty  
19 to accept the law as I state it to you, and to apply it  
20 to the facts as you find them. The logical result of that  
21 application is your verdict in the case. I have permitted  
22 each of you to take notes during the course of this trial.  
23 I expect you to use whatever notes you took merely as  
24 memory aids, they should not be allowed to take precedence  
25 over your independent memory of the facts. Moreover,

1       2 bssr

2       merely because a fellow juror may have memorized in his  
3       or her notes something contrary to your recollection is  
4       not to be taken by you to mean that your memory is in error.  
5       It is your own recollection of the facts, and yours alone,  
6       that is controlling.

7                 Now, in respect to any fact matter, it is your  
8       recollection and yours alone that governs. Anything that  
9       counsel, either for the Government or for the defense may  
10      have said with respect to matters in evidence during the  
11      trial in a question, in colloquy with the Court, in argu-  
12      ment or in summation, is not to be substituted for your  
13      own recollection of the facts. So, too, anything the  
14      Court may have said during the trial, or may refer to during  
15      the course of these instructions, as to any factual matter  
16      in evidence, is not to be taken in lieu of your own recol-  
17      lection.

18                 The case must be decided by you upon the sworn  
19       testimony of the witnesses, and such exhibits as were re-  
20       ceived in evidence, and any stipulation among counsel.

21                 At times during this trial I have been called  
22       upon to make rulings upon various matters of law. As for  
23       example, when a question was put to a witness and it was  
24       objected to or after a question was asked a motion was made  
25       to strike the answer, or an offer of a document was objected

1       3 bssr

2       to. As you know, I have sustained some objections and I have  
3       overruled others. I have received and rejected exhibits,  
4       but it is essential in the performance of your duty that  
5       when anything was ordered stricken from the record, or re-  
6       jected, that you put it out of your mind and disregard it  
7       entirely. Similarly, if a question was asked and an ob-  
8       jection to that question was sustained, and no answer was  
9       given, the question itself should play no part in your  
10      consideration of the case.

11           Please do not concern yourselves at all with my  
12      reasons for these rulings. They are purely legal matters,  
13      and are of no concern to you.

14           Conferences at the bench were conducted at the  
15      request of the attorneys. As I have advised you, these  
16      conferences were solely on questions of law and are of no  
17      concern to you. You are not to draw any inferences against  
18      counsel or any defendant because such requests for a con-  
19      ference were made or because such requests were denied.

20           Now, it is your function to determine the truth  
21      or falsity of the testimony of each witness. No inference  
22      as to the credibility of any witness should be drawn from the  
23      fact that upon occasion I have asked questions of a witness.  
24      My questions were only intended for clarification or to  
25      expedite matters. They were not intended to suggest any

1       4 bssr

2       opinion as to the credibility of any witness wh appeared  
3       before you.

4             How do you determine the truth and how do you  
5       appraise the credibility of witnesses?

6             Well, as I told you when you were first sworn in,  
7       you use your plain, everyday common sense. The degree of  
8       credit to be given to a witness should be determined by  
9       his or her demeanor here. His or her relationship to the  
10      controversy and to the parties, his or her bias or impar-  
11      tiality, the reasonableness of his or her statements, the  
12      strength or weakness of his or her recollection, viewed in  
13      the light of all the other testimony, and the attendant  
14      circumstances in the case.

15             You observed the witnesses. You heard their  
16      testimony. How did they strike you? Did their answers  
17      seem frank, open, truthful and candid, or were they  
18      equivocal, deliberately confusing or evasive, or were they  
19      somewhere in between?

20             How did each witness impress you? And so you  
21      take each one, and on the basis of your common sense and  
22      your everyday experience you determine whether or not you be-  
23      lieve the witnesses and to what extent you believe them.

24             In passing upon the credibility of a witness,  
25      you may also take into account whether there were material

1       5 bssr

2       inconsistencies or contradictions within his or her own  
3       testimony; whether a witness changed his or her testimony;  
4       the extent to which he or she has been corroborated or  
5       contradicted by other credible evidence.

6               Now, the testimony of a witness may fail to  
7       conform to the facts as they occurred because the witness is  
8       intentionally telling a falsehood, because a witness didn't  
9       accurately observe the events about which he testified,  
10      or because his recollection of what happened is at fault,  
11      or even because he has not expressed himself clearly in  
12      giving his testimony.

13              You are entitled to consider the possibility  
14      that when a witness is called upon to testify sometime  
15      after the event, that inconsistencies may result from an  
16      innocent mistake or lapse of memory, rather than from a  
17      deliberate attempt to falsify or change the facts.

18              It is not unusual for a witness in a proceeding  
19      to utter inconsistencies at some stage.

20              You may accept so much of the testimony of a  
21      witness as you may deem true and disregard the rest. You  
22      are at liberty, if you deem it appropriate, to disbelieve  
23      the testimony in whole or in part even though it is not  
24      otherwise contradicted or impeached.

25              You may consider whether the witness is a

1       6 bssr

2       disinterested one or whether he is fostering some interest  
3       of his own in giving the testimony.

4           Now, an interested witness is not necessarily  
5       unworthy of belief. The interest of a witness in the  
6       outcome of the lawsuit is a factor, however, which you may  
7       consider in determining the weight and credibility to be  
8       given to that witness' testimony.

9           It should be remembered that the testimony of  
10      agents of the Government are not to be entitled to any  
11      greater or lesser weight than the testimony of another  
12      witness who is not an agent of the Government.

13           Now, the Government called as a witness Michael  
14      Calise and Angelina David, who, if their testimony is to  
15      be accepted, were accomplices in the crimes charged  
16      against the defendants in this case.

17           In the prosecution of crime the Government is  
18      frequently called upon to use witnesses who are accomplices.  
19      Often it has no choice. The Government must rely upon  
20      witnesses of transactions such as they are.

21           There is no requirement in the Federal Courts  
22      that the testimony of an accomplice be corroborated. The  
23      Government contends that these witnesses' testimony is  
24      corroborated by other evidence with respect to several key  
25      portions of their testimony. However, even without such

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2 corroboration, conviction may rest upon the testimony of an  
3 accomplice, if you believe it and find it credible, and  
4 it does not follow that because a person has acknowledged  
5 participation in some criminal act that he or she is  
6 incapable of giving a true version of what he or she tes-  
7 tified to in the case on trial.

8 Such testimony, however, should be viewed with  
9 caution and scrutinized with care. The fact that a witness  
10 is an accomplice may be considered by you as bearing on  
11 his or her credibility: Was his testimony inspired by  
12 any motive of reward, of self interest or hostility to the  
13 defendant so that he gave false or colored testimony against  
14 him in this court?

15 If you find that it was, you ought to unhesi-  
16 tatingly reject it. However, after a cautious and careful  
17 examination of an accomplice's testimony and his or her  
18 demeanor on the witness stand, if you are satisfied that he  
19 or she told the truth as to certain events, there is no  
20 reason why you should not accept it as credible and act  
21 upon it accordingly.

22 In deciding this case you will be called upon  
23 to consider both direct evidence and circumstantial evidence,  
24 and I would like to explain the difference between these  
25 two types of evidence. Direct evidence is where a witness

1       8 bssr

2       or participant testified as to what he saw, heard or ob-  
3       served, what he knows of his own knowledge; something which  
4       comes to him by virtue of his senses. A document can also  
5       contain direct evidence.

6           Circumstantial evidence is evidence of facts and  
7       circumstances from which one may infer connected facts  
8       which reasonably flow in the common experience of mankind.  
9       Stated somewhat differently, circumstantial evidence is  
10      evidence of facts from which other facts that are material  
11      in the lawsuit may be found by the process of inference.

12           Let me give you an example that I believe has  
13      nothing to do with the facts in this case. Suppose you  
14      had a material issue in some case as to whether John Doe  
15      was drinking alcoholic beverages on some particular night.  
16      A witness might take the stand and testify that he had  
17      given whiskey to John Doe and had seen him drinking it.  
18      That would be what is termed direct evidence. If you  
19      believed the witness, and thought he was able to report  
20      accurately, you could find from that direct evidence that  
21      John Doe had been drinking on the night in question.

22           On the other hand, you may have a witness tes-  
23      tify that he had seen John Doe enter a tavern and then had  
24      seen him leave the tavern a few hours later walking and  
25      talking in ways that suggested he was drunk. If you believed

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2       that witness, and thought he was an accurate reporter, you  
3       could find on the basis of that testimony that John Doe had  
4       been drinking on the night in question. You would be using  
5       circumstantial evidence to find the existence of a material  
6       fact in that hypothetical case. But let me tell you that  
7       for your purposes there is no general rule of law, and no  
8       general rule of good sense that places either of these two  
9       items of evidence, direct or circumstantial, in a general  
10      way on a higher or lower or different footing from the other.

11           With respect to any evidence admitted into a  
12       trial record, whether it is direct or circumstantial, it  
13       is entitled to such weight, and you are permitted to draw  
14       such reasonable inferences, as your good judgment dictates  
15       in a particular case. The weight and effect of any item  
16       or category of evidence depends not on whether it is to be  
17       categorized as direct or circumstantial, but on the concrete  
18       significance of that particular piece of evidence in its  
19       trial setting and upon its intrinsic credibility and per-  
20       suasive power in the light of your observations of the  
21       witness, your own general experience of things, and your  
22       reasonable analysis of the whole record.

23           There are times when different inferences may  
24       be drawn from facts, whether they are proved by direct or  
25       circumstantial evidence. The Government asks you to draw

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2 one set of inferences while the defendants ask you to draw  
3 another. It is for you to decide and for you alone what  
4 inferences you will draw.

5 As I advised you at the start of this trial,  
6 the indictment is merely an accusation or charge. It is  
7 not evidence or proof of a defendant's guilt and no in-  
8 ference of any kind may be drawn from the indictment.

9 The Government has the burden of proving its  
10 charges against each defendant beyond a reasonable doubt.  
11 It is a burden that never shifts and remains upon the  
12 Government throughout the entire trial.

13 A defendant does not have to prove his innocence.  
14 On the contrary, he is presumed to be innocent of the  
15 accusation contained in the indictment, and that presumption  
16 of innocence was in his favor at the start of the trial,  
17 continued in his favor throughout the trial, is in his  
18 favor even as I instruct you now. It remains in his favor  
19 during the course of your deliberations in the jury room.  
20 It is removed only if and when you are satisfied that the  
21 Government has sustained its burden of proving the guilt  
22 of a defendant beyond a reasonable doubt.

23 What is a reasonable doubt? It is a doubt  
24 based on reason which arises from the evidence or lack of  
25 evidence in the case. It is a doubt that a reasonable man

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2 States of America, entitles it to no greater consideration  
3 than that accorded to any other party to the litigation.  
4 By the same token, it is entitled to no less considera-  
5 tion. This case should be considered and decided by  
6 you as an action between persons of equal standing in the  
7 community. All persons stand equal before the law and  
8 are to be dealt with as equals in a court of justice.

9 The indictment names thirteen defendants.

10 Only nine of these defendants are on trial before you.  
11 They are: Lawrence Centore, Peter Variano, James Ostrander,  
12 John Monaco, Michael Picciano, Michael DeMichaels,  
13 Anthony Russillo, Alfonso Coletti and Henry Bucci.

14 These are the only persons whose guilt or in-  
15 nocence you must announce in your verdict. In the  
16 determination of innocence or guilt you must bear in  
17 mind that guilt is personal. The guilt of a defendant or  
18 innocence of the defendants on trial before you must be  
19 determined separately with respect to each of them,  
20 solely on the evidence or lack of evidence as to them.

21 Let me return to the -- turn to the indictment  
22 and read that which is before you.

23 The only count, as you know, that you are  
24 concerned with is Count 2, and it reads as follows:  
25

11 bssr

or woman may entertain. It is not a fanciful or speculative  
doubt. It is not an imagined doubt. It is not a doubt that  
a juror might conjure up in order to avoid performing an  
unpleasant task or duty. It is not proof to an absolute  
certainty -- let me repeat, it is a reasonable doubt. It is  
a doubt that appeals to your reason, to your judgment, your  
common understanding, and your common sense, a doubt  
that would cause you to hesitate to act in matters in your  
daily lives. On the other hand, the Government does  
not have to prove the guilt of a defendant beyond all  
possible doubt or to a positive certainty. If that  
were the rule, few people, however guilty they might be,  
would be convicted.

If, when you consider the evidence in this case,  
you have a reasonable doubt that the Government has proved  
any element of the crime charged, then you must return a  
verdict of acquittal. You may not return a guilty verdict  
simply because you feel that it is more likely than not  
that a defendant committed the crime charged. A guilty  
verdict is only appropriate if each and every one of you is  
satisfied that a defendant's guilt has been proved beyond  
a reasonable doubt.

The fact that the Government is a party here,  
that the prosecution is brought in the name of the United

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A, The Grand Jury further charges from on or about April 15, 1971, and continuously thereafter, up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, Lawrence Centore, also Michael Yannicelli -- I am sorry, Michael Centore, also known as Larry Black, Michael Yannicelli, Peter Variano, Michael Evangelista, William Murty, James Ostrander, John Monaco, Michael Picciano, Michael DeMichaels, Frank Galella, Anthony Russillo, Alfonso Coletti and Henry F. E. i., the defendants, unlawfully, wilfully and knowingly did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit: A sports betting and mutual race horse policy business," being in violation of the laws of the State of New York, to wit: New York State Penal Law, Section 22505 and 22510; B, involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business; and, C, remaining substantially in continuous operation for a period in excess of thirty days, and having a gross revenue of \$2,000 in a single day.

The charge relates to a violation of the Federal Gambling Laws, Title 18, United States Code,

955.

Section 1955 provides in pertinent part as

A, whoever conducts, finances, manages, supervises or owns all or part of an illegal gambling shall be guilty of an offense. B, as used in ion, illegal gambling business means a gambling which, one, is in violation of the law of the which it is conducted is; two, involves five persons who conduct, finance, manage, supervise, own all or part of such businesses, and, three, or remains in substantially continuous operation period in excess of thirty days, or has a gross of \$2,000 in a single day.

The second paragraph, gambling includes, but is ted to conducting policies or numbers games.

Since the federal law defines in part an gambling business as one which is in violation aw of the State in which it is conducted, we illy turn to the law of the State of New York. The w of the State of New York, Section 225, contains owing definition:

2, Gambling. A person engages in gambling stakes or risks something of value upon the

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2 outcome of a contest of chance, or a future contingent  
3 event not under his control or influence, upon an agreement  
4 or understanding that he will receive something of value  
5 in the event of a certain outcome.

6 3, Player means a person who engages in any  
7 form of gambling solely as a contestant or bettor without  
8 receiving or becoming entitled to receive any profit  
9 therefrom other than personal gambling winnings and without  
10 otherwise rendering any material assistance to the es-  
11 tablishment, conduct : operation of the particular  
12 gambling activity.

13 Paragraph 4. Advance gambling activity. A  
14 person advances gambling activity when acting other than  
15 as a player, he engages in conduct which materially aids  
16 any form of a gambling activity.

17 Paragraph 5, Profit from gambling activity.  
18 A person profits from gambling activity when other than  
19 as a player he accepts or receives money or other property  
20 pursuant to agreement or understanding with any person  
21 whereby he participates or is to participate in the pro-  
22 ceeds of the gambling activity. Or, two, policy, or the  
23 numbers game, means a form of lottery in which the winning  
24 chances or plays are not determined upon the basis of a  
25 drawing or other act on the part of persons conducting or

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1 16 bssr

2 connected with the scheme, but upon the basis of the out-  
3 come or outcomes of a future contingent event or events  
4 otherwise unrelated to the particular scheme.

5 With these definitions in mind, I now turn to  
6 the specific sections of the New York State Penal Law which  
7 the indictment charges were violated.

8 Section 225.10 provides in pertinent part, and  
9 I quote, that "A person is guilty of promoting gambling  
10 when he knowingly advances or profits from the unlawful  
11 gambling activity by receiving in connection with a policy  
12 scheme or enterprise (a), money or written records from  
13 a person other than a player whose chances or plays are  
14 represented by such money or records, or, (b) receiving  
15 more than \$500 in any one day of money played in such  
16 scheme or enterprise."

17 Under this section, one clause provides that  
18 New York Law will be violated if a person, in connection  
19 with a policy or numbers game, receives from anybody who  
20 is not a player money or records showing chances or plays.  
21 Under this clause it is the source of money or records  
22 that is the key, and no particular number of bets nor any  
23 particular amount of money need be shown. Another clause  
24 provides that New York Law will be violated if a person,  
25 in connection with a policy or numbers game, receives

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more than \$500 in bets in one day.

Under this clause it is the amount of money that is the key without regard to the number of the bets or the source of the money or records.

Section 225.05 provides that a person is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity. I have already defined advances or profits from unlawful gambling activity for you. Under this section is sufficient if you find beyond a reasonable doubt that a defendant's conduct comes within those definitions, without regard to the number of bets, the amount of money involved or the source of the bets or the money.

I have now read to you the pertinent parts of the New York Law which the Government alleges that the defendants have violated. I instruct you further that it is not necessary for you to find that there was a violation of all these sections. It would be enough to find beyond a reasonable doubt that a defendant violated any one of these sections of the State Law in conducting a gambling business as charged.

To recapitulate: The ~~indictment~~ alleges that the defendants conducted an illegal gambling business in violation of federal law. To establish this, the first

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2 charge contained in the indictment. In order to sustain  
3 the charge under this indictment against a defendant  
4 on trial, the Government must establish as to him beyond  
5 a reasonable doubt that a gambling business was conducted  
6 in the Southern District of New York.

7 I charge you that the Southern District of  
8 New York includes Bronx County and North Tarrytown, Yonkers,  
9 Hastings-on-Hudson, Tuckahoe, Eastchester, and lower New  
10 Rochelle, all in Westchester County.

11 Two, that such gambling business was in violation  
12 of the laws of the State of New York. I have already  
13 instructed you that a person violates New York State  
14 law, when he advances gambling activities by unlawfully  
15 accepting bets from members of the public as a business  
16 rather than in a casual or personal fashion, upon the  
17 outcomes of future contingent events, and also that a person  
18 violates the State law when he either knowingly advances  
19 or profits from such unlawful gambling activity.

20 You should remember that I explained to you a  
21 moment ago three ways in which New York gambling laws  
22 could be violated. One of these required a return of \$500  
23 in money from gambling. The other two did not require  
24 particular amounts.

25 It is important to keep in mind that a violation

element that the Government must prove beyond a reasonable doubt is that the illegal gambling was conducted in violation of New York State Law. If you are convinced beyond a reasonable doubt that a defendant committed any one of the following violations then the Government would have met its burden in proving the first element as to that defendant.

One, if you find that the defendant knowingly advanced or profited from gambling activity by either receiving records or money from someone other than a player, or by receiving more than five hundred dollars numbers bets on one day, then it would be a violation of Section 225.10.

Two, if you find that a defendant knowingly advanced or profited from gambling activity, as I have defined those terms to you, without regard to the amount of money, the number of bets or source of either one, if you find that it is a violation of Section 225.05.

I stress that the defendants here are not charged with a violation of New York State Law. It comes into play only as a part of the crime charged against them under the Federal law, the essential elements of which I shall define for you now.

Now, against this background of the applicable Federal and State laws we turn to a consideration of the

1 || 20 bssr ..

of New York law only serves to trigger the Federal gambling  
law. All the requirements of the Federal gambling law  
must be met before you can convict a defendant. In this  
regard the next element requires that such gambling busi-  
ness was in substantially continuous operation for a period  
in excess of 30 days, or has gross revenue of \$2,000 in  
a single day.

9                   The Government is not required to prove both  
10                 parts of the third element. It is sufficient if it proves  
11                 one or the other.

Now, the term "business" is to be given its normal accepted meaning and is to be determined from all the circumstances of the case, including, among other matters, the volume of the activity, its scope and size. As a general rule, a business enterprise involves a continuous course of conduct rather than a single isolated transaction.

As to the alternative part of the third element,  
if you find that bets placed with the alleged gambling  
enterprise in any single day totalled at least \$2,000,  
that is sufficient upon which to find that the business  
had a gross income in that amount on that day.

I instructed you during the trial that if in fact you find there was an illegal gambling business, then

1       21 bssr

2       it does not matter whether the operation made a profit or  
3       lost money.

4                  Four, the next element is that five or more  
5       persons were involved in a gambling operation in that they  
6       conducted, financed, managed, supervised, directed or  
7       owned all or part of such business. I shall presently  
8       define those terms for you.

9                  The words "conducts", "finances", "manages",  
10      "supervises", "directs" or "owns", are used in their or-  
11      dinary sense or meaning. Thus, to conduct means to act or  
12      carry on or to play a role in furthering enterprise, if  
13      one is so engaged, the extent of his role does not matter.  
14      To conduct would not include one who participates as a  
15      mere bettor, who is only entitled to winnings on his bets  
16      and otherwise does not profit from a particular gambling  
17      business.

18                  Finance means to make funds available.

19                  Manage, supervise, direct or own readily define  
20      themselves.

21                  The next and final element is that the defendant  
22      knowingly, wilfully and intentionally conducted, financed,  
23      managed, supervised, directed, or owned all or part of  
24      such an illegal gambling business or caused any of such  
25      acts to be performed.

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2              Knowledge, wilfulness and intent exist in the  
3       mind and since it is not possible to look into a man's  
4       mind to see what went on, the only way you have at arriving  
5       at a decision on these questions is for you to take into  
6       consideration all the facts and circumstances shown by the  
7       evidence, including the exhibits, and to determine from  
8       all such facts and circumstances whether the requisite  
9       knowledge, wilfulness and intent were present at the  
10      time in question.

11             An act is wilful if it is done knowingly,  
12       deliberately and with an evil purpose. An act is not done  
13       wilfully if it is done as a result of mistake, carelessness,  
14       lack of evil purpose or for some other innocent  
15       reason. It is not necessary for you to find that a de-  
16       fendant knew he was breaking a particular law, and whether  
17       or not an act is knowing or wilful has nothing to do with  
18       what a person's private reasons for committing the act,  
19       so long as the act is done with an evil purpose.

20             A defendant may be found guilty of the crime  
21       charged here if he has aided or abetted the commission  
22       of the crime in violation of Title 18, United States Code,  
23       Section 2. This provides that whoever commits an offense  
24       against the United States, or aids, abets, counsels,  
25       commands, induces or procures its commission, is punishable

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2 as a principal.

3                   Whoever wilfully causes an act to be done which,  
4 if directly performed by him or another, would be an  
5 offense against the United States, is punishable as a  
6 principal.

7                   Thus, a person who aids or abets another to  
8 commit an offense is just as guilty of that offense as he  
9 would be had he committed it himself.

10                  Before you can conclude that a person aided  
11 or abetted you must first find that the substantive crime  
12 charged in this case, conducting an illegal gambling  
13 business, was in fact, committed. Secondly, you must  
14 determine that the defendant in some way knowingly and  
15 intentionally associated himself with the criminal venture,  
16 that he participated in it as something he wished to bring  
17 about and that by his actions he tried to make the crime  
18 succeed. You must find more than the defendant's mere  
19 presence during or knowledge of the offense.

20                  In other words, if one, fully aware of what he  
21 is doing, plays a significant role in furthering and fa-  
22 cilitating an act prohibited by law, he is equally as  
23 guilty as the person who actually and physically performs  
24 the act or acts, even though the latter played a greater  
25 part in the perpetration of the crime. Accordingly, you

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2       may find one defendant guilty of the offense as charged  
3       in Count Two, if you find beyond a reasonable doubt that  
4       any of the named defendants committed the offenses with  
5       which they are charged in that count, and that that first  
6       defendant aided and abetted him.

7                  I will now address myself to more general con-  
8       siderations which you must bear in mind during your de-  
9       liberations. First, I must emphasize again that there  
10      are nine defendants on trial, and you must consider  
11      separately whether the defendants charged have been proved  
12      -- whether the offense charged has been proved guilty  
13      beyond a reasonable doubt.

14                 It is your duty to give separate, personal  
15      consideration to the case of each defendant. When you  
16      do so, you should analyze what evidence in the case shows  
17      with respect to that individual, leaving out of considera-  
18      tion entirely any evidence admitted solely with regard  
19      to other defendants. Each defendant is entitled to have  
20      his case determined from the evidence as to his own acts  
21      and statements and conduct, and any other evidence in the  
22      case which may be applicable to him.

23                 Now, during the course of this trial you have  
24      heard tape recordings of various conversations as well as  
25      other evidence involving one or more of the defendants

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2       but not the others. Bear in mind that you can only con-  
3       sider statements in those conversations against the people  
4       actually speaking or otherwise involved and not against  
5       any other defendant. And in respect to any other evidence,  
6       that can be used only against the defendant it actually  
7       involves or the defendant to whom it is directly  
8       connected.

9                  Therefore, that you find one or more of the  
10      accused guilty or not guilty should not influence your  
11      verdict with respect to the other defendants.

12               Now, the defendants in this case have not taken  
13      the stand to testify. As I told you before, the Govern-  
14      ment has the burden of proving the charges against each  
15      defendant beyond a reasonable doubt. A defendant does  
16      not have to prove his innocence. A defendant has the  
17      right to remain silent. He does not have to testify or  
18      present any evidence in his own behalf, and you may not  
19      draw any inference or conclusion or form any prejudice  
20      because a defendant did not testify and present evidence.

21               Under your oath as jurors you cannot allow  
22      consideration of the punishment which may be inflicted  
23      upon a defendant if he is convicted to influence your  
24      verdict in any way, or in any sense enter into your  
25      deliberations. The duty of imposing sentence rests

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2       exclusively upon the Court. Your function is to weigh the  
3       evidence in the case and to determine the guilt or inno-  
4       cence of a defendant solely upon the basis of such evidence  
5       and the law.

6                  You are to decide the case upon the evidence  
7       and the evidence alone, and you must not be influenced  
8       by an assumption, conjecture or sympathy or any inference  
9       not warranted by the facts.' If you fail to find beyond  
10      a reasonable doubt that the law has been violated, you  
11      should not hesitate for any reason to find a verdict  
12      of acquittal. But, on the other hand, if you should find  
13      that the law has been violated as charged, you should  
14      not hesitate because of sympathy or any other reason to  
15      render a verdict of guilty.

16                 I would like to point out that you should not  
17      enter the jury room with any preconceived pride of opinion.  
18      You should not be unwilling to be convinced by intelligent  
19      argument with your fellow jurors. Each juror has to answer  
20      to his or her own conscience and each has to decide this  
21      case for himself or herself, but in so doing you should  
22      be willing to consider the views of the other jurors and  
23      to talk things out and try your best to reach a unanimous  
24      agreement.

25                 Your verdict must be one with which each juror

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2       agrees.

3                 If during your deliberations, you deem it  
4       necessary to have a copy of the indictment or desire any  
5       of the exhibits, they will be sent in to you on request.

6                 If you wish any portion of the testimony read,  
7       any of the tapes to be played, or the Court's charge re-  
8       read, that will be done.

9                 Let me just say in that connection, I think  
10      each counsel summarized in his summation and suggested  
11      that you have certain portions of the testimony reread.  
12      Let me suggest that what you do is to exhaust your col-  
13      lective recollection first. Go through that process.  
14      Obviously, if you want any of the tapes replayed, if you  
15      want any of the testimony re-read, that will be done. But  
16      let me suggest that you exhaust, each of you, your col-  
17      lective recollection before doing that.

18                 In conclusion, let me say that this is an  
19      important case. Every criminal case is important. It  
20      is important to the Government and it is important to the  
21      defendants.

22                 It is your obligation to decide the case on  
23      the evidence and on the law as I have charged it to you.  
24      I give the case to you with the confidence that you will  
25      do just that.

ssr

I will give to the Foreman a sheet as you go which lists each of the defendants by name with a column entitled, "Not guilty", which I think will aid in recording your decision.

Now, ladies and gentlemen, the process now is me to confer with counsel, who will have an opportunity raise any objections they have to the charge I have en to you and point out any errors I may have made so forth. After that is over I will give the case to

[In the robing room:]

MR. BRODERICK: I have no objection to the ge at all.

THE COURT: Let me go one by one. Mr. Lanna?

MR. LANNA: I have no exceptions.

THE COURT: Mr. Broderick?

MR. BRODERICK: I have no exceptions.

THE COURT: Mr. Bellantoni?

MR. BELLANTONI: No exceptions.

THE COURT: Mr. Hartman?

MR. HARTMAN: No exceptions.

THE COURT: Mr. Lessa?

MR. LESSA: No exceptions.

THE COURT: Mr. Katcher?

Kttcher 2536

STATE OF NEW YORK )  
: SS.  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 27 day of Sept. 1976 deponent served the within *Apprendy* upon

United States Attorney, Southern District of New York

attorney(s) for  
Appellee

in this action, at

1 St. Andrews Pl.  
New York, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing 1 copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this 27 day  
of Sept. , 1976

WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1978